

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TROY L. NUNLEY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: U.S. DEPARTMENT OF JUSTICE by
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1 SACRAMENTO, CALIFORNIA, THURSDAY, JULY 20, 2023

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3 || (In open court.)

4 THE CLERK: Calling case 20-CR-175, United States
5 versus Kristy Lynn Felkins, on for judgment and sentencing,
6 Your Honor.

7 THE COURT: Thank you. Counsel, state your
8 appearances. Let's start first with the Assistant United
9 States Attorney.

10 MS. SAUVAGEAU: Good morning, Your Honor. Emily
11 Sauvageau standing in for Justin Lee on behalf of the United
12 States.

13 THE COURT: Counsel for Ms. Felkins.

14 MS. HARTER: Good morning, Your Honor. Linda Harter
15 from the Federal Defender's office. I'm here with Ms. Felkins.
16 She is standing to my left out of custody.

17 THE COURT: Good morning, Ms. Harter. I haven't seen
18 you in a while.

19 MS. HARTER: Good morning.

20 THE COURT: Good morning. Good morning, ma'am.

21 THE DEFENDANT: Good morning.

22 THE COURT: This is the time and place set for the
23 pronouncement of judgment and sentence.

24 On March 17, 2022, the defendant appeared before this
25 court with her attorney and entered an open plea to a one-count

1 indictment charging murder for hire in violation of
2 18 U.S.C. Section 1958. The matter was referred to the
3 probation officer for preparation of a presentence evaluation
4 and report. The Court has read and considered the presentence
5 report dated May 16, 2023.

6 Ms. Harter, have you received a copy of the
7 presentence report, and have you had an opportunity go over it
8 with your client in detail?

9 MS. HARTER: Yes, Your Honor.

10 THE COURT: All right, thank you.

11 Ms. Felkins, have you received and read a copy of the
12 presentence report?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And, ma'am, have you had an opportunity to
15 go over it with your attorney in detail?

16 THE DEFENDANT: Yes.

17 THE COURT: All right, thank you.

18 The defendant filed formal objections to the PSR.
19 Defendant argues the Court should disregard the guidelines as
20 applied in this case as they are not based on empirical
21 evidence and do not make good policy sense.

22 More specifically, defendant objects to the
23 application of United States Sentencing Guidelines Section
24 2A1.5 and argues the correct guidelines for a violation of
25 18 U.S.C. Section 1958 is United States Sentencing Guidelines

1 Section 2E1.4.

2 Defendant takes issue with Probation applying United
3 States Sentencing Guideline Section 2E1.4(a)(2) in equating the
4 underlying unlawful conduct in this case with conduct that
5 would violate 18 U.S.C. Section 373.

6 Defendant goes on to argue that there are three
7 possible ways to violate 18 U.S.C. Section 1958(a) with
8 increasing penalties for each.

9 Defendant takes the position that in a case where
10 there is never any chance of physical harm such as here where
11 the person contacted was a scam artist, the correct guideline,
12 therefore, is United States Sentencing Guideline 2E1.4.

13 Defendant argues that if the guideline is read to
14 apply the cross-reference for any case in which solicitation
15 for murder using the Internet was done, Section 2E1.4 would
16 never apply to a conviction for 18 U.S.C. Section 1958.

17 Defendant argues that the guidelines bear this out.
18 As the guidelines, when using the cross-reference, would be
19 well over the maximum possible penalty even in a case with no
20 criminal history or aggravating factors which would advise the
21 maximum penalty in every single case.

22 Defendant argues that such a result would eliminate
23 the effect of accepting responsibility as the guideline would
24 be the same whether a person admitted guilty or went to trial.

25 The defendant cites a case, *United States versus*

1 *Temkin*, T-E-M-K-I-N, 797 F.3d 682, Ninth Circuit case from
2 2015, to support the contention that the cross-reference does
3 not make sense as written.

4 The defendant also notes 18 U.S.C. Section 373 has
5 different elements of proof and affirmative defenses than
6 Section 1958.

7 The defendant next argues that United States
8 Sentencing Guideline Sections 2E1.4 and 2A1.5 are not entitled
9 to deference as a policy and that the interplay of those
10 subsections defies logic.

11 Counsel gives an example, and the example is where
12 defendant describes how these guidelines were amended to become
13 harsher over time and argues those changes were not based on
14 empirical evidence.

15 The defendant also argues the four-level increase for
16 pecuniary gain is duplicative of the offense level for cases
17 that involved pecuniary gain, which is an element of Section
18 1958.

19 The defendant argues the Court should look at the
20 history of the guidelines, the huge increases that were not
21 based on empirical evidence in which you raise any
22 proportionality between defendants and which raise the
23 guideline range to the statutory maximum in every case, and as
24 a policy matter, decline to follow the advice of subsequent
25 amendments to the original guidelines.

1 The defendant next argues that the Sentencing
2 Commission has already published new guidelines in the Federal
3 Register that would take effect on November 1, 2023. One of
4 the new guideline provisions will be 4C1.1, which will provide
5 defendants like this defendant before this Court who have zero
6 criminal history points with a two-level decrease and
7 applicable offense level.

8 The defendant emphasizes that the reduction is a
9 result of the Sentencing Commission study of recidivism which
10 noted that offenders with zero criminal history points have
11 considerably lower recidivism rates than other offenders, as
12 well as the fact that less than 40 percent of persons with zero
13 criminal history point scores were receiving sentences within
14 the guideline range.

15 The defendant also objects to the PSR statement that
16 there are no grounds for departure. Defendant argues that
17 there are two grounds for departure in this case: Diminished
18 capacity under 5K2.13, and abhorrent behavior pursuant to
19 5K2.20.

20 The defendant argues there is no doubt at the time of
21 this offense the defendant was suffering from postpartum
22 depression.

23 The defendant also filed a report from Diana Barnes, a
24 clinical psychologist, who reviewed defendant's medical
25 records, her treatment records while on pretrial release,

1 information from the defendant's family and also examined the
2 defendant.

3 Ms. Barnes concluded defendant was suffering from
4 postpartum psychosis at the time of the offense which severely
5 impaired defendant's normal thought and decision-making
6 processes.

7 The defendant argues she also suffered from major
8 depression and Post Traumatic Stress Disorder as a result of
9 sexual abuse from her childhood, as well as abuse at the hands
10 of her ex-husband.

11 The defendant argues this reduced mental capacity was
12 not related to the use of drugs or alcohol.

13 The defendant also argues there was never a real
14 threat of violence, and there was no need to protect the public
15 as she has been receiving mental health treatment for three
16 years and has no other criminal behavior.

17 The defendant makes many of the same arguments to
18 support a departure based on abhorrent behavior.

19 The defendant argues she has no criminal history. She
20 committed the offense during the brief time when she was
21 suffering from untreated mental illness.

22 The offense only occurred on the Internet, and it was
23 a marked deviation from her otherwise law-abiding life.

24 The defendant also emphasizes that no violence
25 occurred, no drugs were involved, and no dangerous weapon was

1 involved.

2 Ms. Harter, did the Court accurately summarize the
3 defendant's arguments?

4 MS. HARTER: Yes, Your Honor, and I appreciate the
5 debrief that you gave the defense papers.

6 I would like to add just one note to your summary:
7 The draft report came out, and I submitted an informal --
8 informal objections that pretty much mirror what you just
9 summarized, and the response to those from Probation, they
10 noted that -- the missing link here for the departures was an
11 expert opinion, a diagnosis and a description of postpartum
12 psychosis.

13 The final report came out before the expert report was
14 submitted. So I just wanted to note that, that at the time
15 probation wrote that final report, they did not have the
16 benefit of the expert report by Ms. Barnes that was due. Your
17 Honor, it's difficult to find an expert who's willing to work
18 on these cases, and then it's difficult to get funding
19 approved. That took some extra time, and by the time the
20 report came, Ms. Barnes came on board, and the final report had
21 already been submitted.

22 THE COURT: All right. I understand that. There
23 actually is a national shortage right now of psychiatrists
24 and/or psychologists, and it doesn't just impact this case, it
25 impacts our system, as well as the mental health system, as

1 well as medical care throughout the United States. I do
2 understand that.

3 Anything further you'd like to add?

4 MS. HARTER: About the guidelines, no, Your Honor.

5 THE COURT: Okay, all right. In response, the
6 Government -- I should indicate the Government did file a
7 response, and the Government argues that defendant's objections
8 are really policy disagreements with the guidelines. As such,
9 the Government argues the Court should overrule the objections
10 and instead consider the policy objections as a request for a
11 variance under 18 U.S.C. Section 3553(a).

12 The Government further argues that the presentence
13 report correctly calculated the guideline range based on
14 application of the United States Sentencing Guideline Section
15 2A1.5, and the Government also emphasizes that the Ninth
16 Circuit in *Temkin* explicitly held that the applicable guideline
17 range for Section 1958 conviction is United States Sentencing
18 Guideline Section 2A1.5.

19 The Government next argues the Court should decline to
20 apply a two-level reduction based on the prospective change to
21 the sentencing guidelines as the Court is required to apply the
22 version of the guidelines in effect at sentencing.

23 The Government requests that if the Court is inclined
24 to apply the two-level reduction before it takes effect, the
25 Court should calculate the guideline range under the current

1 version of the guidelines before varying downward.

2 The Government also requests that if the Court does
3 vary downward, the Court clearly state that the variance is a
4 result of the amendment so the defendant will not receive a
5 further reduction if and when the amendment becomes
6 retroactive.

7 I should note that the Government did not address
8 defendant's request for a downward departure as related to
9 diminished capacity or abhorrent behavior.

10 Did the Court accurately summarize the Government's
11 arguments?

12 MS. SAUVAGEAU: Yes, Your Honor.

13 THE COURT: Does the Government wish to be heard any
14 further?

15 MS. SAUVAGEAU: We would submit on the papers,
16 including the recommendation of the probation office.

17 THE COURT: All right, thank you.

18 The Court agrees with the Government that the majority
19 of defendant's objections or policy disagreements with the
20 guidelines rather than proper formal objections; therefore, the
21 Court will consider those arguments during the sentencing.

22 Further, the Court agrees with the Government and
23 Probation that the PSR properly calculated the defendant's base
24 offense level.

25 The calculation is based on and supported by the

1 *Temkin* case in which the Ninth Circuit held a defendant being
2 sentenced for a Section 1958 conviction should have an offense
3 level set by United States Sentencing Guideline section 2A1.5.
4 That's explicitly stated in *Temkin*.

5 The Ninth Circuit did indicate that the District Court
6 in that case had erred by not using the cross-referencing
7 provision in United States Sentencing Guideline Section
8 2E1.4(a)(2), and for that proposition you could see *Temkin* and
9 that's at Page 695.

10 As to the defendant's request to reduce -- for the
11 Court to reduce her offense level based on a prospective change
12 to the guidelines that is expected to take effect in
13 November 2023, the Court declines to do that, declines to
14 calculate the defendant's guideline range using a guideline
15 provision that is not yet in effect.

16 Lastly, the Court denies defendant's request for a
17 downward departure as Probation pointed out in its response to
18 defendant's informal objection.

19 The defendant engaged in significant planning for this
20 offense that precludes a downward departure for abhorrent
21 behavior pursuant to 5K2.20.

22 As to diminished capacity, the Court finds the facts
23 and circumstances of defendant's offense indicate a need to
24 protect the public because the offense involved a serious
25 threat of violence.

1 The defendant has not persuaded this Court that the
2 threat of violence in this case was any less serious merely
3 because she was talking to a scam artist rather than an actual
4 hitman; therefore, the Court declines to grant a downward
5 departure for diminished capacity pursuant to 5K2.13; however,
6 however, I just want to make it clear that the Court will
7 consider these arguments in determining whether to grant a
8 downward variance during sentencing. For these reasons, the
9 Court does overrule all of the defendant's objections subject
10 to what I've just said.

11 Are there are any other objections to any statements
12 of material facts, sentencing classifications, sentencing
13 guideline ranges and/or policy statements filed that this Court
14 is not aware of?

15 MS. SAUVAGEAU: No, Your Honor.

16 MS. HARTER: No, Your Honor.

17 THE COURT: All right. Thank you. There being no
18 further objections to the findings in the presentence report,
19 the Court adopts those findings and determines those findings
20 to be true and correct.

21 The Court does find an advisory offense level of 34.
22 This includes the following: On the base offense level of 33
23 pursuant to United States Sentencing Guideline Sections
24 2E1.4(a)2 and 2A1.5(a) ., a four-level increase pursuant to
25 United States Sentencing Guideline Section 2A1.5(b)(1) because

1 the defendant paid \$5,000 to hire someone on the dark web to
2 murder the Victim 1, G.S., and a three-level reduction for
3 acceptance of responsibility pursuant to United States
4 Sentencing Guideline Section 3E1.1(a) through (b).

5 The advisory criminal history is I, therefore, the
6 guideline range is 151 to 188 months; however, the statutorily
7 authorized maximum sentence of 10 years is less than the
8 minimum of the applicable guideline range; therefore, the
9 guideline term of imprisonment is 120 months pursuant to United
10 States Sentencing Section 5G1.1(a).

11 Are there any reasons judgment and sentence should not
12 proceed at this time?

13 MS. SAUVAGEAU: No, Your Honor. I don't know when the
14 Court would wish to address this, the victim is present. I'm
15 not sure whether he still wishes to address the Court.

16 THE COURT: Understood, understood. We will address
17 that in a moment.

18 MS. SAUVAGEAU: Thank you.

19 THE COURT: Is there any reason judgment and sentence
20 should not proceed at this time?

21 MS. HARTER: No, Your Honor.

22 THE COURT: All right, thank you.

23 The defendant did file a Sentencing Memorandum with
24 the Court in which defendant requests the Court impose a
25 five-year term of supervision with conditions, including

1 continued counseling and community service based upon factors
2 under 18 U.S.C. Section 3553(a).

3 As to the defendant's history and characteristics, the
4 defendant argues she has never committed a crime prior to this
5 incident.

6 The defendant indicates that her two oldest children
7 now live with her and have written letters explaining how much
8 their mother does for them and how important she is to their
9 family.

10 The defendant also talks about how she is a mother, a
11 teacher and helps the family at home and ranch.

12 The defendant also states she is a vital member of her
13 family, vital member of the community, and there is a long list
14 of people who depend on her.

15 As to the nature and circumstances of the offense, the
16 defendant states she committed the crime after the birth of her
17 third child during a period of time where she was suffering
18 from postpartum psychosis.

19 The defendant reiterates that no one was ever in real
20 danger because the person that defendant found to assist her
21 was a scam artist who has since been arrested.

22 The defendant also emphasizes she was not arrested for
23 four years and five months after she stopped communicating with
24 this scam artist, and when she was arrested, she immediately
25 gave an honest and full account of her actions.

1 As to the need to protect the public, defendant argues
2 the crime took place over seven years ago, and she has not
3 posed any threat to the community or her ex-husband since.

4 The defendant also states that since her release from
5 custody in 2020, she adds her ex-husband did not oppose that
6 release.

7 She indicates that since then, she has been
8 participating in counseling up through pretrial services.

9 The defendant indicates that neither her treating
10 counselor nor the expert hired in this case to evaluate
11 defendant believed she poses a threat, and they agree she was
12 suffering from mental illness that she has been committed to
13 overcoming, that she is extremely well and that she is not a
14 danger.

15 As to the need to provide effective treatment,
16 defendant argues that she has already established a successful
17 relationship with a counselor in her community and sending her
18 to prison would interrupt this treatment and would not be an
19 effective way to treat her mental health issues.

20 As to the need to provide deterrent and to avoid
21 unwarranted sentencing disparities, the defendant argues that
22 for reasons already discussed, a prison sentence is not
23 necessary to deter her from further criminal behavior.

24 As to general deterrence, the defendant argues that
25 although this is a serious criminal action or criminal -- or

1 serious criminal behavior, it is not an imminent threat to the
2 citizenry, and media is already doing a good job of publicizing
3 the fact that sites like the one defendant used are usually
4 frauds, and the people using them are often caught.

5 The defendant further indicates that there are no
6 similar cases that would create an unwarranted sentencing
7 disparity.

8 As to the need to provide restitution, defendant
9 argues that restitution is not an issue in this case, but notes
10 that community service hours would be appropriate to allow
11 defendant to atone for her criminal behavior by giving back to
12 her community.

13 Ms. Harter, did the Court accurately summarize the
14 defendant's arguments?

15 MS. HARTER: Yes.

16 THE COURT: Is there anything you would like to add to
17 those arguments?

18 MS. HARTER: I do have a few comments I'd like to
19 make, if you are ready for those.

20 THE COURT: Sure. I'm ready.

21 MS. HARTER: Okay. So, Your Honor knows I've been
22 doing this for a long time, and there are not many cases that
23 cause me to lose sleep after 30 years, but this one has. I
24 think your job here is difficult because you haven't had a
25 chance to get to know Ms. Felkins and her family.

1 There is no doubt in my mind that she does not pose a
2 danger and that a sentence here does not need to be imposed to
3 deter her or to protect the public in any way. I'm confident
4 of that, but I think she's also shown that because it's been
5 seven years since this happened, and she's been in treatment,
6 she's been fully compliant, and I think she's proven that we
7 don't need to worry about her reoffending in any way.

8 To the victim who is present in the courtroom, I can't
9 imagine what it would feel like to find out about this. I'm
10 sure it was shocking. He expressed in the statement that it
11 was shocking.

12 I don't know if anyone has told him, but he should be
13 aware that there have been three clinicians now who have
14 evaluated Ms. Felkins; two of them treating her and one hired,
15 I'm talking about Diana Barnes. They all concluded that while
16 she was suffering from this serious illness back at the end of
17 2015 and the beginning of 2016, that she's been treated and
18 that she does not pose a danger to the future. That was their
19 expert opinion. So hopefully he takes solace in that.

20 I do want to let Your Honor know that present in the
21 courtroom today, besides the victim in this case and probably
22 his family, are her family. Her husband is here. Her two
23 children, the two oldest children, Jayden and Emerald are here.
24 I know that they wanted to address the Court, but they know
25 that's not usual, and they are aware that you have their

1 letters, and I assured them that you would have given that a
2 careful read.

3 Her father and his wife is here. Matt, her husband,
4 is here, his mother, his sister and his aunt are here showing
5 support for her. Her mother is here, but at the hotel with the
6 baby.

7 You received letters from all of these people, and I
8 don't want to reiterate what's in them. What I do want to
9 highlight, though, that in particular Matt's family, they did
10 notice that something was wrong, and they expressed that in
11 their letters, that something was wrong at the end of 2015, the
12 beginning of 2016. I think that's significant.

13 It's also significant that we have a diagnosis from a
14 clinician, her treating physician back at the end of 2015,
15 after the birth of her son.

16 I know you know that the shortage in psychologists,
17 psychiatrists, and that is a problem because what happened here
18 was she was diagnosed with postpartum depression. She was
19 given some antidepressants and told she should find additional
20 treatment and then her insurance lapsed. Unfortunately, nobody
21 warned her or her family that left untreated, that this could
22 be an even more serious condition, and indeed that's what
23 happened here.

24 From the first time that I met Ms. Felkins in this
25 case, she expressed to me that it was hard for her to

1 understand what happened, that she felt like she was outside of
2 herself or looking at somebody else's life when she thinks back
3 about that time. She struggled to even put it into words when
4 we were talking about it, and the more I got to know her and
5 heard from people in her community, the more just unfathomable
6 it was to me that this person could have gone on the web and
7 sent the e-mails that she sent.

8 All I could say, Your Honor, is that postpartum
9 psychosis is a terrible disease, and she was suffering from it
10 untreated and that explains why this otherwise law-abiding
11 person could do something as crazy as she did.

12 She does not wish any harm to her ex-husband. They
13 did not have a friendly divorce. They did have a custody
14 battle, but he is the father of her children, and she does not
15 wish then or now, truly, any harm to come to him. He's the
16 only father the kids have.

17 I don't think I have anything else to add to that,
18 other than I just don't see any purpose to putting her in
19 prison at this point. It would be a hole in the community, and
20 it would be a hole in her family.

21 THE COURT: Thank you. Thank you. I'll allow her to
22 allocute if she wishes to do so at the appropriate time.

23 All right. The Government also filed a Sentencing
24 Memorandum in which the Government joins in the recommendation
25 of probation officer, that the Court sentence the defendant to

1 87 months of imprisonment, 36 months of supervised release and
2 a \$100 special assessment.

3 The Government also notes the victim will be present
4 at sentencing, at least insofar as the Sentencing Memorandum I
5 initially received indicated that he did wish to be heard. Did
6 the Court accurately summarize the Government's arguments?

7 MS. SAUVAGEAU: Yes, Your Honor.

8 THE COURT: Thank you. Is there anything further in
9 support of those arguments, Counsel?

10 MS. SAUVAGEAU: Submitted.

11 THE COURT: In determining the sentence, the Court
12 looks at the United States Supreme Court case *United States*
13 *versus Booker*, as well as the advisory sentencing guidelines.
14 The Court notes that the guidelines are not mandatory, but
15 advisory and a starting point. The Court also looks to the
16 statutory provisions of 18 U.S.C. Section 3553(a) to determine
17 a sentence sufficient but not greater than necessary to comply
18 with the purposes of sentencing.

19 You know, the Court has reviewed this case in detail,
20 and I'll tell you this: It's not a simple case where I could
21 just simply read it, put it down, and make a decision. It
22 really isn't that kind of case.

23 The Court has reviewed the filings in this case, the
24 character reference letters, criminal history, her level of
25 involvement, the reports by experts in this case, the family

1 history, and before I proceed to pronounce judgment and
2 sentence, I know there was an indication that the victim wished
3 to be heard, and then I think there was an indication maybe he
4 didn't want to be heard, but this is the kind of case where if
5 the victim is present, I really need to hear from the victim in
6 this case. And I really would like to hear from the victim. I
7 don't need to, but I really would like to hear from the victim
8 in this case. It would really help the Court in this instance
9 to hear from the victim. So if the victim is present, I would
10 like to hear from him.

11 MS. SAUVAGEAU: Thank you, Your Honor. The victim
12 G.S. is present, and he is seated in the purple shirt in the
13 back. I asked him right before we stated if he still wanted to
14 speak, and he was unsure. So if we could ask him that now...

15 THE COURT: Mr. G.S., would you please come forward,
16 sir. Just come up to the podium, please.

17 You've sat here -- and pull the microphone a little
18 bit closer to you.

19 You've sat here and you heard everything we've been
20 talking about for at least the last 30 minutes. Really, this
21 is about you. Something the Government said is that you didn't
22 know any of this was going on, and then when you found out, I
23 imagine it was quite traumatic for you, but I want you to tell
24 me how you felt about this, sir, please.

25 VICTIM G.S.: Um, I was very, very surprised at all of

1 the pieces of it.

2 I felt that the divorce was as amicable as you could
3 expect. There was cooperation on both sides, and I think that
4 looking at how things played out afterward really shows that
5 that was the case when it comes to custody.

6 Even if I had custody -- I didn't use this case as a
7 reason to legally pull the kids back. I thought it was still
8 fair that they spend time with their mom. Just as she said,
9 "He is their father," she is their mother, so I supported her
10 as their mother at every step of this. So, the push for there
11 being that much conflict I think is very inaccurate.

12 The biggest piece that stands out to me with this is
13 that yes, she is a wonderful mother in many respects. She is
14 vital to the family and community in a lot of ways, but in this
15 situation there is also great advantage to portraying that
16 image and character. While if you look historically at those
17 who have been close, maintaining long-term friendships hasn't
18 been something that she's been capable of.

19 Then looking at the children, one of the big parts of
20 this that bothers me now is that the kids have been exposed to
21 pieces of this that were absolutely unnecessary, and in doing
22 that, it's taking -- it's harming them for her advantage. I
23 don't think they're in a place to recognize that or the effect
24 that it's going to have on them in the long-term, and of all of
25 the pieces of this, that is the one that bothers me the most,

1 far more than any other aspect.

2 THE COURT: I just have a couple of questions, and
3 this just helps give me some clarity and helps me base the
4 decision that I have to make. It's a very important decision
5 that's going to effect your ex-wife. It's going to effect your
6 kids. It's going to effect her family. It's also going to
7 effect you as well because you will always have that bond with
8 your ex-wife because you do have kids.

9 Ms. Harter indicated earlier that there was a period
10 of time where people around your wife -- and I don't know --
11 maybe you were in a better position to see it than other
12 people -- noticed changes in her. Did you notice any changes?

13 VICTIM G.S.: During the 2015-2016 time period?

14 THE COURT: Yes.

15 VICTIM G.S.: It's really hard to say. Many of our
16 communications at that point were around custody and division
17 of property. At that point the pieces that I noticed were out
18 of character seemed to be most likely things that I attributed
19 to being from her lawyer trying to represent her and something
20 that was more of a standard division of property.

21 THE COURT: When you say noticed things out of
22 character, what are you referring to? Give me some examples.

23 VICTIM G.S.: Just being more combative on details on
24 things when it came to dividing property, but that was really
25 the basis of a lot of our communication at that point. When it

1 came to time with kids, there was nothing that stood out with
2 that communication.

3 THE COURT: You indicated or at least the Government
4 had indicated that you said that she had trouble making
5 friends. I think you said that she had trouble making friends
6 or maintaining relationships. Was that around the period of
7 time when you were noticing that?

8 VICTIM G.S.: It's always been the case. I do agree
9 with the professionals on that respect, in that there was,
10 from a childhood trauma, a need to be in control of lots of
11 situations. When it came to combative -- anything with friends
12 where there was a bit of conflict on dominance, it became -- it
13 ended poorly.

14 THE COURT: So then there is this conflict with the
15 divorce, and it seems like that just manifested itself again.
16 Am I reading too much into that?

17 VICTIM G.S.: No, I believe you are absolutely
18 correct, and I think the custody was a bigger aspect of it.
19 Having lack of control when it came to the kids, that had a
20 tremendous effect on her, I could very much see that.

21 THE COURT: Okay. My final question, obviously this
22 is going to have -- let me ask you this question, I'm going to
23 be very blunt about it: Both the Government and Probation
24 recommends that your ex-wife be sentenced to 87 months in
25 prison, and I want to know how you feel about that.

1 VICTIM G.S.: That is a very difficult one to answer
2 because I believe the sentence is less for my benefit and less
3 for her benefit and more for the kids in ways that they don't
4 recognize at this point.

5 There's been a lot over the recent past where it has
6 been advantageous to have a particular narrative that they're
7 exposed to, and they don't know better. They are not going to
8 be able to unwind many of the things they're being told, and
9 they believe those things, and they will for a very long time.
10 I believe it is essential that they get sufficient time to be
11 able to figure themselves out and work this out themselves. To
12 me that is the biggest aspect of it and why I would push for
13 something more substantial.

14 THE COURT: Well, obviously we allow victims to speak,
15 and we call them Victim Impact Statements because truly if you
16 look at the purpose of a Victim Impact Statement, I'm not here
17 to protect the integrity of, you know, your kids' relationship
18 with your wife, your kids' relationship with you.

19 What I'm here is to see if the Court should mete out
20 some punishment to your wife based upon -- very simple, based
21 upon her attempts to have you killed and have who is now your
22 wife, your girlfriend at the time, to have her harmed in some
23 way as well, that's why I'm here. So I wanted to just make it
24 clear that while there's some issues that played out during the
25 course and even playing out now with your kids and how they

1 view you, how they view your wife, that's not why I'm here.
2 Understood?

3 VICTIM G.S.: Fair enough, sir. I'm just trying to be
4 as honest and transparent.

5 THE COURT: Right. I think what I hear you saying is
6 that you do think that she should -- she deserves some
7 punishment for this; is that what I hear you saying?

8 VICTIM G.S.: The intent to end someone's life,
9 especially someone who's working with you on so many levels,
10 yes, I believe that should be as substantial as the law allows.

11 THE COURT: Okay. All right. Thank you very much. I
12 appreciate it.

13 Any further Victim Impact Statements?

14 MS. SAUVAGEAU: No, Your Honor. His written statement
15 was provided with the PSR, which I know the Court already
16 indicated that it reviewed.

17 THE COURT: Absolutely. Does the Government wish to
18 say anything further?

19 MS. SAUVAGEAU: Submitted.

20 THE COURT: All right. Ms. Harter, I did indicate
21 that at some point I would give your client an opportunity to
22 allocute if she wishes to do so. Does she wish to be heard?

23 MS. HARTER: She does, Your Honor. I just have a
24 couple of things I would like to add.

25 THE COURT: Sure.

1 MS. HARTER: And I don't know if Mr. Scott's aware or
2 not, but I think the Court is aware that the children that
3 we're talking about, Jayden and Emerald, Emerald is actually a
4 young adult now. They were taken by Ms. Felkins in for therapy
5 where they could have a private relationship with the therapist
6 because I think she recognized that all of this was hard on
7 them, and by "all of this," I'm talking about her own actions.
8 She did recognize that that was difficult for the children to
9 process. She was arrested at home in front of her children.
10 So she knows that they had issues to process. She took them to
11 counseling so that they could help deal with that, and, in
12 fact, Emerald is still in counseling to talk about those
13 things.

14 So I don't think there's -- not only -- her presence
15 does not interfere with them getting counseling and processing
16 that. In fact, they have facilitated -- she has facilitated
17 that they get help, professional help.

18 I think Mr. G.S. is probably frustrated by his lack of
19 contact with the children in recent years, and, you know, it's
20 a difficult situation because part of her pretrial release
21 conditions has been no contact with Mr. G.S., but -- I mean,
22 Ms. Felkins. Now, he wasn't subject to those conditions. But
23 to the extent that prior to her arrest they were co-parenting
24 and able to communicate and do that sort of thing, well, once
25 she couldn't have contact at all with him anymore, you know,

1 that made things very difficult as he said in his statement,
2 but a lot of that, I think, Your Honor, was beyond her control.

3 I don't think that you need to put her in prison so
4 that the children and their father can have a better
5 communication or a better contact. I think what has happened
6 is just a function of that she couldn't communicate anymore,
7 and she couldn't really co-parent with him anymore.

8 So those are the only -- and the last thing I would
9 say is even Mr. G.S., Your Honor, tells you that she is a good
10 mother and that she is a good member of her community, and that
11 he doesn't feel like you need to put her in prison to protect
12 him.

13 THE COURT: All right. Thank you. Does your client
14 wish to be heard?

15 MS. HARTER: She does.

16 THE COURT: Yes, ma'am.

17 THE DEFENDANT: Your Honor, I'm so sorry for what I
18 did. I lost my mind, and I worked extremely hard to improve my
19 mental health, but that doesn't undo what I did. The pain and
20 the stress that I have caused to G.S. and his family, my
21 children and my family, I do thank God everyday that the person
22 that I talked to was a scam artist because that could have been
23 so much worse.

24 I'm very glad that no harm came to G.S., and I wish
25 that I could undo it all.

1 THE COURT: All right. Thank you. Anything further
2 for me to decide?

3 MS. SAUVAGEAU: No, Your Honor.

4 THE COURT: Anything further?

5 MS. HARTER: No, Your Honor.

6 THE COURT: All right, thank you. Let me say
7 something, Ms. Harter, you are absolutely correct, there is
8 nothing I could do here from the bench to alleviate any
9 lingering issues, any pain that these kids endured during this
10 whole ordeal; that's just not what we do, and you are
11 absolutely correct about that.

12 I heard what the victim said in this matter, and I'm
13 referring to him as "victim" because I don't want his name
14 used, and that's what we do here. So I just don't want to make
15 it so impersonal because it is personal, I did hear from him.
16 You know, when he made the comments, for example, about the
17 relationship that he had with the kids and that the kids have
18 been exposed to things that are hurting them, I don't think
19 there's any doubt about this, that there is any doubt. I think
20 the kids are probably in need of counseling as much as anyone
21 else in this case because they have to grow up with this for
22 the rest of their lives, and they sort of had a bird's eye view
23 to what was happening here. I really sincerely hope that they
24 do get counseling and that they're able to, at some point, I
25 think in a perfect world, have a relationship with both their

1 mother and their father.

2 So that really doesn't drive the Court. Of course I'm
3 not here for family reconciliation, I'm not a family law court,
4 so that's not what I do here, but what we do here is we try to
5 meet out punishment for somebody who committed a crime.

6 I think it's already been stated, you know, that if
7 the person, the so-called hitman was not a scam artist, we
8 would be having a much different case here today. So there is
9 a level of punishment that the Court needs to meet out in this
10 case. So the Court is asking itself, What is that level of
11 punishment? That's especially true here because there's so
12 many different variables here and things that the Court can
13 consider; for example, here you have a defendant before the
14 Court who comes here who has been a victim of abuse as a child,
15 and obviously as we all know, those of us in the system know,
16 that abuse continues on for the rest of her life, and it spills
17 over into relationships as well. I think her ex-husband spoke
18 to some of it in how she has problems keeping and maintaining
19 relationships, that is something that's common with victims of
20 abuse.

21 Then you have a mental health component, and you have
22 certain diagnosis, Post Traumatic Stress Disorder, postpartum
23 psychosis, diminished capacity to abhorrent behavior, and you
24 got all these things that play a part in who she is, and I have
25 to take this person before me, and I have to try to meet out a

1 sentence that we would look at and say, "Well, that's justice."
2 I don't think any sentence in this case could do anyone in this
3 case justice.

4 On the one hand I have the victim here who's saying,
5 "I want you to mete out some punishment."

6 I got the defendant here saying, "Well, you could mete
7 out some punishment, but just don't make it imprisonment. I
8 don't want to go to prison."

9 I have to consider all those things, and I do think
10 that this is a case that does call for some imprisonment. The
11 reality is this: There are going to be some people who are
12 going to be harmed by that, not just this defendant, but these
13 kids. I read all these letters. The people that she serves,
14 so to speak, and people who love her and people who care for
15 her and people who truly know her, who know what she's been
16 through as a person, but I also agree with what Ms. Harter said
17 earlier. For me not to take into consideration the diminished
18 capacity and abhorrent behavior would simply be wrong on so
19 many different levels. Because we generally -- when we deal
20 with people who come before this Court who have criminal
21 histories, those are the easy cases. Those are the easy cases.
22 Those are the cases where we are talking about gradations of
23 punishment. We know, we know, I don't want to say someone
24 slots into a certain sentence, no, they don't, and we still
25 listen, and you know how I do things. I listen to everything

1 everyone tells me, and I go over -- I sometimes go over it, and
2 people ask me, "Why do you take so long," because I like to go
3 over these cases, and I want to truly capture the person before
4 me.

5 I think I know the person before me today. I think
6 that this case is really sad. It's really sad because there
7 was those things that interplay, the things that are working in
8 her life, the mental health, and the person that she is, but
9 also I have to look at the crime that was committed and that
10 was serious. Although it was a scam artist, it was still very,
11 very serious. Then the statement that if his girlfriend's with
12 him, hurt her too. I have the deal with that.

13 I don't think -- I'll be honest with you, I'm going to
14 grant a variance in this case because I don't think that 87
15 months in this case is appropriate.

16 I'm going to tell you, 87 months was not -- that was
17 something that took all these factors into consideration. I'll
18 tell you, they took some of the factors into consideration, I
19 just don't think they took enough into consideration.

20 Therefore, it is the judgment and sentence of this
21 Court, pursuant to the Sentencing Reform Act of 1984, that the
22 defendant Kristin Lynn Felkins will be committed to the custody
23 of Bureau of Prisons to be in prison for a term of 60 months.

24 The defendant will pay a special assessment of \$100,
25 payment to begin immediately.

1 The Court does find the defendant does not have the
2 ability to pay a fine, so imposition of a fine is hereby
3 waived.

4 Upon release from imprisonment, the defendant shall be
5 placed on supervised release for a term of 36 months.

6 Within 72 hours of release from the custody of Bureau
7 of Prisons, the defendant shall report in person to the
8 probation office in the district to which she is released.

9 While on supervised release, the defendant shall not
10 commit another federal, state or local crime, and shall not
11 illegally possess any controlled substance.

12 The defendant shall cooperate in the collection of dna
13 as directed by the probation officer, and shall comply with the
14 standards conditions which had been recommended by United
15 States Sentencing Commission and adopted by this Court.

16 The mandatory drug testing condition is suspended
17 based upon this Court's determination that the defendant poses
18 a low risk of future substance abuse.

19 The Court also adopts the Special Conditions
20 recommended by probation officer in the Sentencing
21 Recommendation portion of the probation report and imposes all
22 of those listed as Special Conditions.

23 The Court does find that this sentence is sufficiently
24 long to punish the defendant, deter others from similar
25 criminal conduct, but not be longer than necessary to achieve

1 those stated goals, and, therefore, meets the requirements of
2 18 U.S.C. Section 3553(a).

3 Ms. Felkins, you do have a right to appeal from your
4 conviction if you believe that your guilty plea was somehow
5 unlawful or involuntary or if there's some other defect in the
6 proceedings that was not waived by your plea.

7 You also have a statutory right to appeal your
8 sentence under certain circumstances, particularly if you think
9 the sentence is contrary to law.

10 With few exceptions, any Notice of Appeal must be
11 filed within 14 days of judgment being entered in your case.

12 If you cannot afford the cost of an appeal, you will
13 be permitted to proceed without the payment of cost.

14 If you cannot afford counsel, one will be appointed to
15 represent you.

16 If you request, the Clerk of the Court will prepare
17 and file a Notice of Appeal on your behalf.

18 Ms. Harter, do you have a voluntary surrender date?

19 MS. HARTER: Your Honor, we're asking for a date at
20 the end of September to give her time to arrange child care for
21 the baby, and she'll need to enroll the other child in school.

22 THE COURT: All right. Thank you. We could do the
23 29th. September 29th, that's the last day of weekday in
24 September. September 29.

25 MS. HARTER: Yes.

1 THE COURT: All right. It is further ordered, Ms.
2 Felkins, that having been sentenced to the custody of Bureau of
3 Prisons, you shall surrender to the institution designated by
4 the Bureau of Prisons, or if no such institution has been
5 designated, to the United States Marshal in Sacramento,
6 California before 12:00. Have they changed it? Okay, before
7 12:00 p.m. on September 29, 2023.

8 Ma'am, I am also required to advise you that it is a
9 criminal offense punishable by a consecutive term of
10 imprisonment to fail to surrender for a service of sentence
11 pursuant to the order of this Court.

12 All conditions of pretrial release shall remain in
13 effect until the defendant surrenders in accordance with this
14 order.

15 I'll recommend she be housed in an institution in
16 Northern California.

17 MS. HARTER: Well, Your Honor, I think the closest
18 place to Fallon for women would be either Victorville or
19 Dublin.

20 THE COURT: I'll recommend she be housed either
21 Victorville or Dublin, but this recommendation is subject to
22 the security classification of the defendant and space
23 availability as determined by the Bureau of Prisons.

24 Is there anything further?

25 MS. SAUVAGEAU: Your Honor, at the risk of beating a

1 dead horse, I know we talked about reasons for variances, but
2 with the November 1 prospective amendments in mind, I just
3 wanted to clarify if that is one of the Court's reasons for the
4 variance.

5 THE COURT: No, that's not. Understood?

6 MS. SAUVAGEAU: Yes. Thank you.

7 THE COURT: Thank you, very much.

8 Good luck, ma'am. Thank you.

9 All right. Court stands in recess.

10 (Proceedings concluded at 11:18 a.m.)

11

12 C E R T I F I C A T E

13

14 I certify that the foregoing is a true and correct
15 transcript of proceedings in the above-entitled matter.

16

17 

18 MARYANN VALENOTI, RMR, CRR
Official Court Reporter
19 CA CSR #11266

20 September 19, 2023
21 DATE

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23

24

25